



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 8, 1996

Ms. Lan P. Nguyen
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR96-0501

Dear Ms. Nguyen:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 30157.

The City of Houston (the "city") received a request for information concerning an individual who was arrested by the Houston Police Department ("HPD") for public intoxication and subsequently released upon payment of a fine. The individual's attorney filed a claim against the city for personal injuries the individual allegedly sustained while in the custody of the HPD. The city asserts that the requested information is excepted from required public disclosure under sections 552.101 and 552.103(a) of the Government Code.

Some of the information at issue is confidential under section 552.101 of the Government Code, which excepts from disclosure information made confidential by law. The information at issue includes medical records, access to which is governed by the Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes. Section 5.08(b) and (c) of the MPA provide:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient's behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Section 5.08(j)(1) provides for release of medical records upon the patient's written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Section 5.08(j)(3) requires that any subsequent release of medical records be consistent with the purposes for which the department obtained the records. Open Records Decision No. 565 (1990) at 7. Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991).

You assert that the information at issue includes information made confidential under section 143.089 of the Local Government Code. Section 143.089 provides guidelines concerning a police officer's civil service file and the police department's internal personnel file. Section 143.089(g) provides that a police department may maintain an internal file on a police officer that contains more and different information than what is in the officer's civil service file. Internal files maintained pursuant to section 143.089(g) are confidential and not subject to disclosure. *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied); Open Records Decision No. 562 (1990) at 7. Thus, you may not release the information at issue if it is maintained in a section 143.089(g) file.¹

As to the other records at issue, to secure the protection of section 552.103(a) a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.-Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. Under Open Records Decision No. 638 (1996), a governmental body may establish that litigation is reasonably anticipated by showing that (1) it has received a claim letter from an allegedly injured party or his attorney and (2) the governmental body states that the letter complies with the notice of claim provisions of the Texas Tort Claims Act ("TTCA") or applicable municipal statute or ordinance.

You have submitted to this office a copy of a "notice of claim" letter from an attorney representing the individual who was allegedly injured while in the custody of the HPD. Because your request for a decision from this office was made prior the issuance of

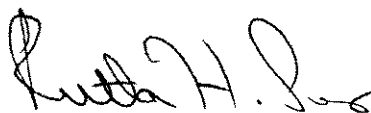
¹We note that if the city receives a request for information contained in the police department's internal files, the city must refer the requestor to the civil service director.

Open Records Decision No. 638 (1996), this office will assume that you are representing that the notice letter you received satisfies the requirements of the TTCA or the applicable municipal statute or ordinance. We have reviewed the records, and our review shows that they are related to the anticipated litigation. Thus, the city has met its burden of showing that litigation is reasonably anticipated and the information at issue may be withheld pursuant to section 552.103(a). However, if in the future you assert that section 552.103(a) is applicable on the basis of a notice of claim letter, you should affirmatively represent to this office that the letter complies with the requirements of TTCA or applicable municipal statute or ordinance.

We note that the applicability of section 552.103(a) ends if the other parties to the anticipated litigation obtain the information or when the litigation concludes. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350 (1982) at 3, 349 (1982) at 2. We also note that since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, Open Records Decision No. 542 (1992) at 4, the city could choose to release any information that is not otherwise confidential. Gov't Code § 552.007. Information that is confidential must be withheld from disclosure even after the litigation has concluded.² See Gov't Code § 552.352. We also note that if in the future you assert that section 552.103(a) is applicable on the basis of a notice of claim letter, you should affirmatively represent to this office that the letter complies with the requirements of TTCA or applicable municipal statute or ordinance.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the fact presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Ruth H. Soucy".

Ruth H. Soucy
Assistant Attorney General
Open Records Division

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²Please note that if there is other confidential information in the requested records, it may not be disclosed even after the litigation has concluded. Release of confidential information is a criminal offense. Gov't Code § 552.352,

Ref.: ID# 30157

Enclosures: Open Records Decision No. 638 (1996))
Submitted documents

cc. Mr. Werner R. Voigt, Jr.
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(w/enclosures-Open Records Decision No. 638 (1996))